

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EL DORADO OIL WORKS)

Appearances:

For Appellant: w. F. Williamson and W. R. Ray, Attorneys

For Respondent: Frank M. Keesling, Franchise Tax Counsel

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the El Dorado Oil Works to his proposed assessments of additional taxes in the amounts of \$2,392.27 and \$4,339.04 for the taxable years ended December 31, 1935, and December 31, 1936, respectively.

The Appellant is a domestic corporation engaged in the processing and sale of vegetable oils. It appears that its plant is located in California, that it purchases the bulk of its raw material in the Philippine Islands, where it maintains offices, and that although its sales are made to purchasers throughout the United States, it does not maintain sales offices or salesmen in any state other than California, but that it sells through brokers in other states. Under Section 10 of the Act, the tax upon Appellant was required to be measured by that portion of its net income which is derived from business done within California. The Appellant determined this amount by applying to its total net income a ratio based upon its payroll, tangible property, sales, manufacturing expenses and purchases. The Commissioner reallocated its net income upon the basis of a formula consisting of only three factors--tangible property, payroll and gross sales. The Commissioner's formula also differed from the Appellant's in that the latter did not regard its sales to customers in other states as California sales, while the Commissioner attributed all of the sales to California. The propriety of the allocation formula used by the Commissioner is the sole question presented by this appeal.

At the outset it should be observed that the three-factor formula is one that has been widely used and that on its face it would appear to be productive of a reasonable result. As applied in this case it cannot, accordingly, be held to produce an improper result in the absence of affirmative evidence to that effect. (See *Underwood Typewriter Co. v. Chamberlain*, 254 U.S. 113; *Bass, Radcliff & Gretton, Ltd. v. State Commission*, 266 U.S. 271). The contention of the Appellant is that it has been able to operate successfully because of the low prices at which it purchases its raw materials in the Philippine

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Islands and that consideration must be given, therefore, to such purchases in the allocation formula. We are unable, however, to agree with this contention. Conceding that Appellant is doing business in the Philippine Islands, and that a portion of the profit which it realizes as the result of its sales is attributable to its operations in the Philippines, we think that circumstance has been sufficiently recognized in the allocation formula used by the Commissioner through the inclusion therein of the factors of payroll and property.

Although as previously stated, Appellant has no offices or salesmen in other states, it contends that a large portion of its sales are not attributable to California because of the alleged fact that the contracts pursuant to which they are made are consummated outside the state and that title to the goods passes to the purchaser outside the state. The manner in which these transactions are carried out is set forth in the Appellant's brief, p. 5, as follows:

"In making sales to customers outside of California, Appellant in accordance with advices of its brokers prepares and signs a contract in California which contract is thereafter signed by the buyer outside of California. The contract of sale, it is fundamental, thus is made outside of California. The goods are shipped on an order bill of lading drawn to the order of the Appellant and endorsed by it and sent with a sight draft to Appellant's bank at the point of destination. Buyer to obtain the goods must take up the draft and only then can he obtain the bill of lading. The goods are not ascertained at the time of the contract and are not held for the buyer or ascertained until the buyer calls for delivery or until the date of delivery as set out in the contract of sale."

Under Section 10 of the Act, we believe that the decisive factor is whether or not Appellant's activities in connection with sales of the above nature constitute business done entirely in California or partly in the states in which the purchasers are located and to which the goods are shipped. Appellant has cited no authorities whatsoever indicating that it is to be regarded as doing business in those states. A similar question to that involved herein was presented for our determination in the Appeal of Great Western Electro Chemical Co., decided April 24, 1934, and the Appeal of Green Spot, Inc., decided this day. In both of these appeals we held that a company selling goods to purchases in other states through the efforts of brokers located outside California, was not doing business outside the state, and that consequently its tax should be measured by its entire net income. See also Southern Cotton Oil Co. v. Roberts, 25 App. Div. 13.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax **Commissioner**, in overruling the protest of the El Dorado Oil Works, a corporation, to proposed assessments of additional taxes in the **amounts** of \$2,392.27 and \$4,339.04 for the taxable years ended December 31, 1935, and December 31, 1936, based upon the income of said company for the years ended December 31, 1934, and December 31, 1935, respectively, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at **Sacramento, California**, this 15th day of November, 1939, by the State Board of Equalization.

Fred E. Stewart, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST; Dixwell L. Pierce, Secretary